

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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CHAIM FORTGANG,

Index No.

Plaintiff,

-against-

COMPLAINT

SHMUEL WASSERMAN AND
CHAIM WASSERMAN,

Defendants.

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Plaintiff, CHAIM FORTGANG (“Plaintiff” or “Fortgang”), as and for his
Complaint against Defendants SHMUEL WASSERMAN (“Shmuel”) and CHAIM
WASSERMAN (“Chaim”) (collectively “Defendants”), by and through his undersigned
attorneys, respectfully alleges as follows:

THE PARTIES

1. Plaintiff Chaim Fortgang is an individual who is a resident and citizen of the State of New York.
2. Defendant Shmuel Wasserman is an individual who, upon information and belief, is a resident and citizen of the State of New Jersey.
3. Defendant Chaim Wasserman is an individual who, upon information and belief, is a resident and citizen of the State of New Jersey.
4. Upon information and belief, Defendant Shmuel Wasserman is the son of Defendant Chaim Wasserman.

JURISDICTION AND VENUE

5. This is an action to recover damages in the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) exclusive of interest, cost and fees.

6. There is complete diversity of citizenship between Plaintiff and all Defendants and jurisdiction is proper under 28 U.S.C. § 1332 (a).

7. Venue is proper under 28 USC § 1391 (a).

FACTS COMMON TO ALL CAUSES OF ACTION

8. On or about April 30, 2008, Defendant Shmuel Wasserman requested that Plaintiff lend him the principal sum of Five Hundred Thousand Dollars (\$500,000.00).

9. Following oral negotiations between Plaintiff and Defendant Shmuel Wasserman, Plaintiff agreed to lend and Defendant Shmuel Wasserman agreed to pay the principal amount of \$500,000.00 in four quarterly installments of One Hundred Twenty Five Thousand Dollars (\$125,000.00) each with interest each quarter calculated at the rate of fifteen percent (15%) per annum on the unpaid principal.

10. This Agreement was memorialized in an email sent from Shmuel Wasserman to Plaintiff on April 30, 2008, a true copy of which is annexed hereto as Exhibit 1.

11. In accordance with Plaintiff's and Shmuel Wasserman's agreement, Shmuel Wasserman sent Plaintiff an email containing instructions to wire the principal amount of \$500,000.00 to an account at Capital One Bank located in Passaic, New Jersey which was owned by Defendant Chaim Wasserman and, upon information and belief, also by Defendant Shmuel Wasserman ("Defendants' Account"). A copy of Defendant Shmuel Wasserman's wire instructions is annexed hereto as Exhibit 2.

12. Pursuant to said Agreement, and in reliance on Defendant Shmuel Wasserman's promise to repay timely the balance with interest, on April 30, 2008 Plaintiff wired \$500,000.00 to Defendants' Account.

13. Pursuant to said Agreement, on July 30, 2008, Defendant Shmuel Wasserman made the first quarterly payment in the amount of \$144,000.00, which represented the quarterly payment of principal of \$125,000.00 plus interest of \$18,750.00 plus an overpayment of \$250.00 due.

14. The overpayment of \$250.00 has been applied by Plaintiff to the unpaid interest.

15. Despite the terms of their Agreement, and despite due demand therefore, Defendant Shmuel Wasserman has made no further payments under the loan.

16. The loan is presently in default and all amounts therewith are due and owing.

**AS AND FOR A FIRST CLAIM FOR RELIEF
AGAINST DEFENDANT SHMUEL WASSERMAN**

17. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-16 above as if set forth fully herein.

18. As a result of the above-referenced Agreement and Plaintiff's full performance thereunder, Plaintiff and Defendant Shmuel Wasserman entered into a binding contract for the loan and repayment of money.

19. Defendant Shmuel Wasserman has failed and refused to perform under the contract and is in material breach thereof.

20. As a result, Plaintiff has suffered damages in the amount of \$375,000.00 plus interest calculated at the rate of 15% per annum thereon from July 30, 2008 to the date of judgment, less \$250.00.

**AS AND FOR A SECOND CLAIM FOR
RELIEF AGAINST ALL DEFENDANTS**

21. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-16 above as if set forth fully herein.

22. Plaintiff deposited \$500,000.00 in Defendants' Account with the expectation of being repaid, and not as a volunteer.

23. Defendants Shmuel Wasserman and Chaim Wasserman have been unjustly enriched by the receipt and retention of such funds.

24. Notwithstanding the payment of \$144,000.00 to Plaintiff, the retention by Defendants of the balance of the funds they received (\$356,000.00) is inequitable and unconscionable.

25. As a result, Plaintiff has been damaged in the amount of \$356,000.00 plus interest at the statutory rate calculated from April 30, 2008 thereon to the date of judgment.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendants as follows:

1. On Plaintiff's First Claim for Relief, judgment against Defendant Shmuel Wasserman in the amount of \$375,000.00 plus pre-judgment interest at the rate of 15% per annum calculated from July 30, 2008;
2. On Plaintiff's Second Claim for Relief, judgment against Defendants Shmuel Wasserman and Chaim Wasserman, jointly and severally, in the

amount of \$356,000.00 plus pre-judgment interest at the statutory rate
calculated from April 30, 2008;

3. Cost and disbursements as provided by statute; and
4. Such other and further relief as this Court may deem just and proper.

Dated: March 30, 2009
Garden City, New York

MORITT HOCK HAMROFF & HOROWITZ LLP

By: /s/ Lee J. Mendelson
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